

## **Notice of Proposed Changes in Regulations of the Fish and Game Commission**

(Continuation of Register 2004, No. 8-Z, and Commission Meeting of February 6, 2004)

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 205, 215, 220, 240, 315 and 316.5, of the Fish and Game Code and to implement, interpret or make specific Sections 200, 205, 206, 215 and 316.5, of said Code, proposes to amend subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations, relating to the Klamath-Trinity River System.

Proposed changes to sections as set forth in the first Notice (Notice Register 2004, No. 8-Z, published February 20, 2004) remain the same, except new material shown in **bold face type** (see Updated Informative Digest below).

### **Updated Informative Digest/Policy Statement Overview**

**Hook Size Change for Anadromous Waters of the Klamath River System:** Current regulations in subsection (b)(91.1)(A)2. of Section 7.50 define Special Fishing Methods Restrictions for all anadromous waters of the Klamath River below Iron Gate Dam. These requirements restrict the use of single barbless hooks having a gap between the point and shank greater than 5/8 inch; or, any multiple barbless hooks having a gap between the point and shank greater than 1/2 inch. For clarification and in the interest of consistency, the Department is recommending language from Section 2.10, Hook and Weight Restrictions be substituted to subsection (b)(91.1)(A)2. of Section 7.50. This recommendation would define "Gap" and "Shank", restrict the use of any multiple hooks with a gap greater than 3/4 inch or any hook with a shank longer than 2 inches, and restrict the use of any multiple hook or more than one single hook on non-buoyant lures exceeding one ounce. This recommendation will make fishing gear restrictions for all anadromous waters of the Klamath River system consistent with statewide restrictions for river and streams.

**Quota Adjustment:** Under current regulations in subsection (b)(91.1)(C), the allowable Chinook salmon harvest in the Klamath River system is based on spawning run-size predictions and spawning escapement goals. The harvest and the distribution of the catch are regulated by seasons, daily and weekly bag and possession limits, and area quotas and allocations.

Annual adjustment of the quota is necessary to meet natural and hatchery escapement needs for Klamath River fall-run Chinook salmon stocks, while providing equitable harvest opportunities for ocean (sport and commercial) and river (sport and tribal) users. The total river system recreational harvest of fall-run Chinook salmon is currently regulated by a quota. In 2003, the share, or impact quota, for the Klamath River basin allowable sport catch was 10,800 adult fish (26 percent of the total allowable harvest by non-tribal fisheries, including ocean-commercial, ocean-recreational and recreational-river fisheries).

Projections of the abundance of adult Klamath River fall-run Chinook salmon in the 2004 season are not yet available from the PFMFC. However, preliminary examination of data

available to Department staff suggests that the predicted 2004 adult fall-run Chinook salmon run will be greater than the 2003 run. Consequently, the Department is suggesting that the Commission consider a 2004 quota for the river-recreational fishery larger than that of last year, and for notice requirements, within a range of 5,000-21,000 adult Chinook salmon. The Commission also will consider modifying the share of the allowable catch allocated to the river recreational fishery (which was 26 percent in 2003). Adjustment of this share is included in the recommended 5,000-21,000 range of the quota. As in prior years, the river recreational fishing quota would be split evenly between fisheries above and below the boundary separating the Klamath River system sub-quota areas (see proposed boundary change below).

**Change in Sub-Quota Boundary:** The Department is recommending that the physical landmark designating the lower and upper sub-quota area for the Klamath River Basin be changed from Coon Creek Falls to the Highway 96 bridge at Weitchpec. The boundary is used to divide evenly the impact quota for adult fall-run Chinook salmon harvest into two sub-quota areas within the Klamath River Basin. There are two Coon Creek tributaries to the Klamath River. One enters the Klamath River 6 miles below the Highway 96 bridge at Weitchpec and the second enters the Klamath River approximately 8 miles upstream from the Highway 96 bridge. The Department receives several inquiries from anglers requesting additional information or clarification pertaining to which Coon Creek the regulations refer to. The Highway 96 bridge at Weitchpec is more identifiable and eliminates the confusion between the two Coon Creek tributaries. All regulatory language referencing Coon Creek Falls shall be changed to the Highway 96 bridge at Weitchpec. There will be no harvest impacts to anglers since the Klamath River Basin impact quota for fall-run Chinook salmon does not change.

**Closures to Modify Allocations:** Currently, the annual recreational impact quota is split evenly, with 50 percent of the quota allocated to the Klamath River below the Highway 96 bridge at Weitchpec (proposed boundary) and 50 percent to the remainder of the Klamath River Basin above the Highway 96 bridge at Weitchpec, including the Trinity River. Proposed regulations define three sub-quota areas above the Highway 96 bridge at Weitchpec. The three quotas ensure equitable harvest of adult fall-run Chinook in the upper Klamath and Trinity rivers.

The 2004 quota to be recommended by the PFMC is not currently known; however, it is expected to be larger than that established for the 2003 season. All closures for adult Chinook salmon will be designed to maximize and distribute the harvest of adult fall-run Chinook salmon while managing the fishery within the impact quota.

The current quota system requires the Department to monitor angler harvest of adult Chinook in each sub-quota area on a real-time basis. Due to likely funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest monitoring in the upper Klamath River above the Highway 96 bridge at Weitchpec and the Trinity River above Willow Creek for the 2004 season. Instead, the following recommendations are based on data analysis and management experiences from previous years that estimate harvest in the upper reaches of the Klamath River Basin relative to known harvest in the lower Klamath River.

**1. Klamath River Main Stem - Allowable Fishing Season from the Highway 96 bridge at Weitchpec to 3,500 feet below Iron Gate Dam:** The Department has reviewed all available Klamath Chinook harvest and run-timing data for the Klamath River from several previous years. Based on this review, the Department has developed a Harvest Predictor Model (HPM) which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath River and the number of fish harvested in the upper river. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

**2. Upper Trinity River Main Stem - Allowable Fishing Season from Old Lewiston Bridge to the Highway 299 West Bridge at Cedar Flat:** The Department has reviewed all available Trinity River Chinook harvest and run-timing data for this area. Based on this review, the Department has developed a HPM which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath River and the number of fish harvested in the upper Trinity River. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

**3. Lower Trinity River Main Stem - Allowable Fishing Season from Hawkins Bar Bridge (Road to Denny) Downstream to the Mouth of the Trinity:** The Department has reviewed all available Trinity River Chinook harvest and run-timing data for this area. Based on this review, the Department has developed a HPM which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean and the Trinity River from Lewiston Dam downstream to the confluence with the Klamath River. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath River and the number of fish harvested in the lower Trinity River. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

**Increase in Daily Bag Limit, Weekly Bag Limit and Possession Limit:** The 2004 quota to be recommended by the PFMC is not currently known; however, it is expected to be higher than that established for the 2003 season. Consequently, the Department is recommending an increase in daily bag, weekly bag, and possession limits for the 2004 Klamath River sport fishery.

The Department is recommending that the Commission consider the following Klamath River recreational fishery changes to reflect an increase in the Klamath River basin impact quota:

1. Increase in Daily Bag Limit: The daily bag limit, as specified in the current regulation, is three king salmon (Chinook salmon), but no more than one adult king salmon over 22 inches total length, and one hatchery trout or hatchery steelhead or brown trout. The Department is proposing that the Commission modify the king salmon daily bag limit to a total of three king salmon, but no more than two king salmon over 22 inches total length and one hatchery trout, or one hatchery steelhead or one brown trout.

2. Increase the Weekly Bag Limit: The current regulation specifies that no more than four king salmon over 22 inches total length may be retained in any seven consecutive days. The Department is proposing that the Commission increase the weekly bag limit to six king salmon over 22 inches total length in any seven consecutive days.

3. Modify Possession Limit: The current regulation specifies that no more than 12 king salmon may be possessed, of which no more than four may be over 22 inches total length. The Department is proposing that the Commission modify the possession limit to 12 king salmon may be possessed, of which no more than six may be over 22 inches total length.

**Special Wild Steelhead Harvest Area:** Current regulations prohibit the harvest of wild steelhead in the Klamath-Trinity River system. During the mid-1990's, declines in wild steelhead populations were noted within the Klamath River system and regulations were imposed to limit the harvest of wild steelhead. During the past three years (2001-2003) various forms of evidence suggest that wild steelhead populations in the Klamath River have increased substantially since the mid-1990s.

Based on increases in wild steelhead populations in the main stem of the upper Klamath River, the Department is proposing to allow a limited harvest of wild steelhead in the upper most 11-mile reach of the Klamath River. This proposal will allow anglers to harvest one adult wild steelhead per day, but no more than 3 per season, in the Klamath River from 3,500 feet below Iron Gate Dam to the Interstate 5 Bridge during a four-month period from November 1 through February 28. All other angling regulations pertaining to steelhead in the Klamath River and its tributaries will remain unchanged. The purpose of this proposal is to provide anglers with additional steelhead fishing opportunities.

**Options to Open the New River to Angling:** The Department supports maintaining the closure of the New River and other Trinity River summer steelhead holding tributaries. Plentiful angling opportunity exists to fish for wild summer steelhead in their migratory corridor of the main-stem Trinity river downstream of their summer holding habitat. This is consistent with the Department's policy to allow fishing for sensitive stocks only in migratory areas and not in holding areas.

The Department recognizes that substantial increases in returns of summer steelhead have occurred on the New River over the past three years, but is still concerned with highly variable returns between years and lack of adequate personnel resources to conduct necessary angler-impact monitoring.

The Commission has received written and oral testimony from members of the public recommending New River be opened to angling. At the December 5, 2003 Commission meeting, the Department was asked to develop options which would allow limited angling opportunities in the New River

Summer steelhead enter the New River starting in April and over summer in deep pools until the first rains in late fall. A 1991 study found that many summer steelhead within the main-stem New River once within a pool remain in that same pool for up to seven months. These fish are extremely vulnerable and could possibly be stressed repeatedly if angling were

allowed throughout the entire season. Subsequently, the Department has developed two options which would promote summer steelhead conservation while providing some amount of angling opportunities in the New River.

#### New River Option 1:

Open the New River to fishing from the Saturday preceding Memorial Day to July 15 and September 15 to November 15, from the confluence of Slide and Virgin Creeks downstream to the confluence with the Trinity River. Only artificial lures with barbless hooks, with a zero bag limit would apply.

The Department has several concerns with this option. Mainly, it fails to adequately protect juvenile out-migrants and adult summer steelhead. The earlier of the two open season proposed by Option 1 (Saturday after Memorial Day – July 15) does not afford the protection needed for out-migrating smolts, which peak in May and continue out-migrating through July. In addition, studies have documented that mortality due to stress associated with catch and release fishing increase as water temperatures approach 70 degrees F. Water quality studies on New River have documented water temperatures meeting or exceeding 70 degrees F during early June and extending throughout the summer. The Department does not support this option due to the potential mortality of out-migrating smolts and the increased catch and release mortality to adult summer steelhead associated with elevated water temperatures.

#### New River Option 2:

Open the New River to fishing from September 15 through November 15, immediately downstream of the confluence pool of Slide and Virgin Creeks downstream to the confluence with the Trinity River. Only artificial lures with barbless hooks, with a zero bag limit would apply.

Option 2 is a possible compromise between proposed Option 1 and the current status quo (complete closure to fishing). Option 2 would not allow angling in the earlier part of the season (Saturday preceding Memorial Day through July 15) in order to protect summer steelhead and downstream migrating smolts. The Department is concerned that elevated water temperatures during June through July 15 would result in increased catch and release mortality of adult summer steelhead.

Option 2 also proposes a slightly different open area than Option 1. Historically, the confluence pool of Virgin and Slide Creek with the New River was never open to angling. Option 2 proposes opening the area downstream of the confluence pool, but not including the confluence pool. This pool requires additional protection necessary because of its propensity to congregate large numbers of steelhead. The entire main-stem of the New River would be open to angling, while protecting those fish that are holding in the upstream most pool in the main-stem system.

### New River Option 3:

Allow fishing in the main-stem New River from the mouth upstream to the confluence of the East Fork from September 15 through November 15. Gear would be restricted to artificial lures with barbless hooks (no bait), and a zero bag would apply.

The upper most reaches of the New River (upstream of the confluence of the East Fork) contain approximately 30 percent of the adult summer steelhead holding pools. This area is extremely remote and very difficult to monitor. Because of the uncertainty and the potential negative impacts to adult summer steelhead that may occur from excessive angling, an option which maintains some protected areas would be beneficial. The Department considers this option the most conservative of the three options presented but does not afford the maximum protection for summer steelhead found in current regulations. This option would be consistent with the regulations that were in place prior to 1999 when the FGC adopted a complete angling closure on New River.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Resources Building Auditorium, 1416 Ninth Street, Sacramento, CA, on April 2, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS FURTHER GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Baja Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA, on May 4, 2004, at 9:00 a.m., to consider adoption of the proposed Klamath-Trinity River Sport Fishing regulations. It is requested, but not required, that written comments may be submitted on or before Friday, April 30, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@dfg.ca.gov](mailto:FGC@dfg.ca.gov), but must be received no later than Tuesday, May 4, 2004 at the hearing in Sacramento. All correspondence, including E-mail, must include the true name and mailing address of the commenter.

The regulations as proposed in strikeout-underline format, as well as all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Tracy L. Reed at the preceding phone number. Jim Hopelain, (916) 445-3597, Department of Fish and Game, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the above address. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

### **Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation

adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businessmen to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath River businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.
- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None:
- (c) Cost Impacts on a Representative Private Person or Business:  
  
The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

#### Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

#### Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

### FISH AND GAME COMMISSION

Dated: March 9, 2004

Robert R. Treanor  
Executive Director